

Exhibit D

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VIA EMAIL (HOLLY@THESENSORYPATH.COM);
THEN REGISTERED MAIL)

Ms. Holly Barker Clay
The Sensory Path
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Mr. Brad Walsh, Registered Agent
Sensory Path, Inc.
265 N. Lamar, Ste W
Oxford, MS 38655

***Subject: Intellectual Property Infringement and Unfair Competition by
The Sensory Path
Our Ref.: 6925-14***

Dear Ms. Clay,

Nixon & Vanderhye, P.C. represents Fit and Fun Playscapes LLC ("Fit and Fun") in intellectual property matters.

Fit and Fun is the exclusive owner of intellectual property including copyright, trademarks and the underlying trade dress in its reusable stencils, paint kits, sensory path adhesive stickers and indoor roll-out games as well as its website (fitandfunplayscapes.com) and social media sites, which support its retail store services and online retail store services that feature its goods and services.

Fit and Fun has an established presence across the United States and is a leading source of its playscape products.

Recently, we received information that your company operates a webpage at <https://thesensorypath.com/>, and a facebook site at <https://www.facebook.com/thesensorypath/> that also features sensory path adhesive decals. Our review of these pages indicates that some of your sticker designs copy Fit and Fun's copyrighted designs and trade dress.

In particular, your Numbered Daisy Element appears to be a derivative work of Fit and Fun's Daisy Hopscotch Reusable Stencil design and Daisy Hopscotch Super Stickers design. These are registered with the copyright office as VA 2-159-009 and VA 2-159-010 respectively. See copies of these at Exhibits 1 and 2 hereto. See a comparison of the works at Exhibit 3 hereto.

Your log sticker design and layouts are derivative works of Fit and Fun's copyrighted Jump Log designs and layouts. Fit and Fun has sold its Jump Log stencils since 2015 and its Jump Log stickers since 2018. See copyright registration No. VA 2-163-650 and VA 2-163-651 attached at Exhibit 4 and 5 hereto. See Exhibit 3 hereto showing a comparison of your log designs and our client's.

Your "Infinity Snake" appears to be a derivative of our client's copyrighted "Snake Loop." Fit and Fun has offered its Snake Loop since in stencil form since 2015. See copyright registration No. VA 2-163-653 attached at Exhibit 6. See also comparison of the works at Exhibit 3.

Your "Dilly the Dragon" work appears to be a derivative of our client's "Alphabet Snake," which it has offered in stencil form since 2015. See Copyright Registration No. VA 2-163-655 attached at Exhibit 7. See also comparison of the works at Exhibit 3.

Your "Going on a Bear Hunt" work appears to be a derivative of our client's copyrighted "Tree Hopscotch."

In addition, your use of the Push Wall hand print and footprint stickers is also substantially similar to our client's Wall Push-Up products. See Exhibit 3.

The copied products represent a valuable form of copyright and/or trade dress that has achieved substantial success and recognition by the general public and is immediately recognized by others as being associated solely with Fit and Fun. Thus, a very distinct possibility exists that potential consumers will incorrectly assume that your goods and services, website and social media pages originate with Fun and Fit or are associated and/or sponsored by Fit and Fun.

I am sure you will appreciate, Fit and Fun places considerable value on its intellectual property rights and considers any copying and/or adoption of its unique works to be a very serious matter. Under U.S. copyright law, 17 U.S.C. § 106, the owner of a copyright has the exclusive right to reproduce copyrighted works, prepare derivative works based upon the original work, and distribute copies of the copyrighted work to the public. Further, any unauthorized copying, preparation of derivative works or display of copyrighted materials constitutes copyright infringement and entitles the owner to obtain monetary and equitable relief in a United States federal district court. *See* 17 U.S.C. §§ 501 and 602. Fit and Fun has also developed a significant amount of goodwill in its goods, marketed, advertised and sold under its trademarks. In addition, under U.S. unfair competition law, a person or company can be precluded from offering a product or service that results in potential confusion in the relevant market, particularly if the product/service unfairly competes by "palming off" the good name and reputation of an earlier, established entrant in the same field and/or adopts and uses the same distinctive trade dress. *See e.g.* 15 U.S.C. § 43(a).

Your improper use of Fit and Fun's intellectual property are likely to cause consumers to become confused as to the source or origin of Fit and Fun's goods and services, and to mistakenly believe that your goods and services emanate from Fit and Fun, are licensed by Fit and Fun, or are otherwise affiliated with Fit and Fun. Your use of the Fit and Fun's copyrights and trade dress appears to be a deliberate attempt to pass off your goods and services as having some association or connection with our client and/or derive some financial benefit from the Fit and Fun reputation in this market. This use constitutes, among other things, intentional copyright infringement, deceptive trade practices and unfair competition under various federal and state laws in the United States.

Our client has evidence documenting that your media manager viewed our client's website at specific times, prior to you offering infringing works.

Please be advised that Fit and Fun will not hesitate to enforce its intellectual property rights against infringing acts to the fullest extent of the protection enjoyed in its intellectual property under the Copyright, Trademark and Unfair Competition laws.

In view of your willful actions, Fit and Fun has the right to seek not only an accounting for damages, but also enhanced damages, an award of its attorney's fees, pre and post judgment interest, injunctive relief, impoundment and destruction of infringing inventory, and other remedies.

Fit and Fun is presently willing to resolve this matter without taking immediate legal action, provided that you agree to the following in writing:

1. Immediately and permanently cease from any further unauthorized use, reproduction, adaptation, distribution, by way of the internet, world wide web or otherwise, of materials covered by Fit and Fun's copyrighted works and trade dress. For the avoidance of doubt, these include, but, are not limited to, the above mentioned Daisy numbered elements, Logs, Alphabet Snake, Snake Loop, Tree Hopscotch; and Wall Push-Up hand and footprints;
2. Destroy all materials in your possession or control bearing Fit and Fun copyrighted material and trade dress, including the removal of all such materials from your website, promotional materials, social media sites, etc.;
3. Recall all current ads placed that use the Fit and Fun copyrighted material and trade dress likely to cause confusion with Fit and Fun's works;
4. Identify all persons to whom you have sold or have pending sales of products copied from Fit and Fun;
5. Provide us with a full accounting relating to your activities relating to use of such products namely: (a) the number of products sold to date copied from Fit and Fun; the number of any pending sales on order; and (b) the purchase price and sale price for each product sold to date; and provide us with copies of all documents in connection therewith

so that we may determine the profits which you have made from your infringing activities, which profits are to be disgorged to our client.


Unless you notify us immediately that you will promptly comply with the foregoing demands, we will be forced to take appropriate action to protect our client's valuable legal rights, including, injunctive relief, compensatory damages, enhanced damages, disgorgement of your profits from infringing activities and attorney fees under the Copyright Act and applicable state laws in federal district court.

If you have any questions, please feel free to contact me.

Fit and Fun reserves all rights and remedies. This letter is written "without prejudice."

Very truly yours,

NIXON & VANDERHYE P.C.

By: 

Sherri De Luca

Enclosure(s)

cc: Pamela Gunther, Fit and Fun